

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

RODOLFO HERNANDEZ DIAZ §  
v. § CIVIL ACTION NO. 9:08cv48  
MICHAEL MUKASEY, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Petitioner Rodolfo Diaz, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2241 complaining of the legality of his detention by U.S. immigration authorities. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On May 22, 2008, the Magistrate Judge ordered Diaz to pay the statutory filing fee or to furnish a properly certified application for leave to proceed *in forma pauperis*. A copy of this order was sent to Diaz at his last known address but was returned as undeliverable, with the notation that Diaz was no longer at the facility. To date, he has not notified the Court of his present mailing address or current whereabouts.

On June 6, 2008, the Magistrate Judge issued a Report recommending that the petition be dismissed for failure to prosecute or to obey an order of the Court. A copy of this Report was sent to Diaz at his last known address, return receipt requested, but no objections have been received; accordingly, Diaz is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Magistrate Judge's Report is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus is DISMISSED without prejudice. Should Diaz remain in custody within the Eastern District of Texas and desire relief from such custody, he may refile his petition. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So **ORDERED** and **SIGNED** this **27** day of **June, 2008**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge